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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
12

13 **NATIONAL INSTITUTE OF**  
14 **FAMILY AND LIFE ADVOCATES**  
15 **d/b/a NIFLA, a Virginia corporation,**  
**et al.,**

16 Plaintiffs,

17 v.

18 **KAMALA HARRIS, in her official**  
19 **capacity as Attorney General for the**  
20 **State of California, et al.,**

21 Defendants.  
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Case No. 3:15-cv-02277-JAH-DHB

**DEFENDANT ATTORNEY  
GENERAL KAMALA D.  
HARRIS'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
DISMISS**

Date: January 11, 2016  
Time: 2:30 p.m.  
Dept.: 13B  
Judge: John A. Houston  
Trial Date: None  
Case Filed: October 13, 2015

1 Because this case is not ripe for review, the Court should dismiss this matter  
2 with prejudice for lack of subject matter jurisdiction.

3 Federal Rules of Civil Procedure 12(b)(1) allows a party to raise the defense  
4 that the court lacks “jurisdiction over the subject matter” of a claim. “A motion to  
5 dismiss for lack of subject matter jurisdiction may either attack the allegations of  
6 the complaint or may be made as a ‘speaking motion’ attacking the existence of  
7 subject matter jurisdiction in fact.” *Thornhill Publ’g Co. v. Gen. Tel. & Elecs.*, 594  
8 F.2d 730, 733 (9th Cir. 1979) (citations omitted). The instant Rule 12(b)(1) motion  
9 attacks the allegations of the complaint. In such an instance, and similar to the  
10 standards applicable to Rule 12(b)(6) motions, the district court must accept the  
11 allegations of the complaint as true. *See Safe Air for Everyone v. Meyer*, 373 F.3d  
12 1035, 1039 (9th Cir. 1994); Schwarzer, Tashima & Wagstaffe, *Rutter Group*  
13 *Practice Guide: Fed. Civil Procedure Before Trial*, § 9:84 (The Rutter Group  
14 2007).

15 Where a Rule 12(b)(1) motion is brought, the burden of proof is on the party  
16 asserting federal subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of*  
17 *Am.*, 511 U.S. 375, 377 (1944); *Thornhill Publ’g Co.*, 594 F.2d at 733.

18 Defendant Kamala D. Harris, the Attorney General of California, is filing this  
19 motion to dismiss concurrently with her opposition to Plaintiffs’ motion for  
20 preliminary injunction. As explained in detail in that brief, the Court should deny  
21 Plaintiffs’ motion for preliminary injunction because, among other reasons, this  
22 case is not ripe for judicial review. (*See Defendants’ Opposition to Plaintiffs’*  
23 *Motion For Preliminary Injunction* at 11-14.) That discussion is incorporated here  
24 by this reference.

25 Because there is no ripe dispute, the Attorney General respectfully requests  
26 that the Court dismiss this action with prejudice, in addition to denying preliminary  
27 injunctive relief. *See Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134,  
28 1142 (9th Cir. 2000) (“Because this action is not ripe for judicial review, we vacate

1 the district court's decision and remand this case to the district court with the  
2 instruction to dismiss the action without prejudice."); *see also Shelter Creek Dev.*  
3 *Corp. v. City of Oxnard*, 838 F.2d 375, 377 (9th Cir. 1988) ("The question of  
4 ripeness goes to our subject matter jurisdiction to hear the case."). The Court  
5 therefore should grant the Attorney General's motion to dismiss.

6 Dated: November 13, 2015

Respectfully Submitted,

7 KAMALA D. HARRIS  
8 Attorney General of California  
9 STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General

10  
11 /s/ Anthony R. Hakl  
12 ANTHONY R. HAKL  
13 Deputy Attorney General  
14 *Attorneys for Defendant*  
*Kamala D. Harris and Edmund G.*  
*Brown, Jr.*

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## CERTIFICATE OF SERVICE

Case Name: **National Institute of Family and  
Life Advocates, et al. v. Kamala  
Harris, et al.**

No. **15-cv-02277-JAH-DHB**

I hereby certify that on November 13, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT ATTORNEY GENERAL KAMALA D. HARRIS'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 13, 2015, at Sacramento, California.

Tracie L. Campbell  
Declarant

  
Signature

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